<u>SUBSTITUTION ORDER</u>

MIRECKI V. CITY OF NEW YORK ET AL, 07cv03477 (NG)(MDG)

    Plaintiff has filed a letter motion to substitute Gladys Guerrero as plaintiff instead of Anthony Mirecki, who passed away on July 7, 2009. <u>See</u> ct. doc. 17.[1]

    Rule 17(a) of the Federal Rules of Civil Procedure states that "[a]n action must be prosecuted in the name of the real party in interest[,]" including an executor or an administrator who "may sue in their own names without joining the person for whose benefit the action is brought." Fed. R. Civ. P. 17(a). The determination of legal capacity to sue must be made under the law of the forum state. Fed. R. Civ. P. 17(b)(3). Under New York law, "[a] personal or other legal representative of a non-domiciliary decedent, duly appointed or authorized by the law of any other state, territory or other jurisdiction of the United States where the decedent was domiciled, may sue in any court of this state in his capacity as personal or other legal representative ..." N.Y. Estates, Powers and Trusts Law § 13-3.5(a). Because Gladys Guerrero, the decedent's wife, has been issued Letters of Administration by the Surrogate of the county of Middlesex, New Jersey, the motion is granted.

    Therefore, GLADYS GUERRERO, as Administratrix OF THE ESTATE OF ANTHONY MIRECKI is hereby substituted as plaintiff. Hereinafter, the caption of this action and the docket sheet accordingly amended.

    SO ORDERED.

Dated: Brooklyn, New York
          September 21, 2009

                            _____/s/_____
                            MARILYN D. GO
                            UNITED STATES MAGISTRATE JUDGE

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    [1] Plaintiff initially filed the application as a motion for leave to proceed in <u>forma</u> <u>pauperis</u>. That entry has been corrected on the docket sheet to identify the correct motion.